

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 496

**46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

INTRODUCED BY

Danice Picraux

AN ACT

RELATING TO CRIMINAL LAW; AMENDING ELEMENTS OF THE CRIMES OF HARASSMENT AND STALKING; CREATING A NEW CRIMINAL OFFENSE KNOWN AS INCITEMENT TO COMMIT HARASSMENT OR STALKING; PROVIDING PENALTIES; AMENDING AND ENACTING SECTIONS OF THE HARASSMENT AND STALKING ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-3A-1 NMSA 1978 (being Laws 1997, Chapter 10, Section 1) is amended to read:

"30-3A-1. SHORT TITLE.--~~[Sections 1 through 5 of this act]~~ Chapter 30, Article 3A NMSA 1978 may be cited as the "Harassment and Stalking Act"."

Section 2. Section 30-3A-2 NMSA 1978 (being Laws 1997, Chapter 10, Section 2) is amended to read:

"30-3A-2. HARASSMENT--~~[PENALTIES]~~ PENALTY.--

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1           A. Harassment consists of a person knowingly  
2 pursuing a pattern of conduct:

3                 (1) that is intended to annoy, seriously alarm  
4 or terrorize another person and that serves no lawful purpose.  
5 The conduct must be such that it would cause a reasonable  
6 person to suffer substantial emotional distress; or

7                 (2) with an electronic communication device  
8 that is intended to seriously alarm or terrorize another person  
9 and that serves no lawful purpose. The conduct must be such  
10 that it would cause a reasonable person to suffer substantial  
11 emotional distress.

12           B. Whoever commits harassment is guilty of a  
13 misdemeanor."

14           Section 3. Section 30-3A-3 NMSA 1978 (being Laws 1997,  
15 Chapter 10, Section 3) is amended to read:

16           "30-3A-3. STALKING--PENALTIES.--

17           A. Stalking consists of a person knowingly pursuing  
18 a pattern of conduct that would cause a reasonable person to  
19 feel frightened, intimidated or threatened. The alleged  
20 stalker must [~~intend to place another~~] intentionally act in a  
21 way that would place a reasonable person in reasonable  
22 apprehension of death, bodily harm, sexual assault, confinement  
23 or restraint or the alleged stalker must [~~intend to~~]  
24 intentionally act in a way that would cause a reasonable person  
25 to fear for his safety or the safety of a household member. In

.149289.4GR

underscored material = new  
[bracketed material] = delete

1 furtherance of the stalking, the alleged stalker must commit  
2 one or more of the following acts on more than one occasion:

3 (1) following another person, in a place other  
4 than the residence of the alleged stalker;

5 (2) placing another person under surveillance:

6 (a) by being present outside that  
7 person's residence, school, workplace or motor vehicle or any  
8 other place frequented by that person, other than the residence  
9 of the alleged stalker; or

10 (b) in a remote manner by means of an  
11 electronic communication device; or

12 (3) harassing another person.

13 ~~[B. As used in this section, "household member"~~  
14 ~~means a spouse, former spouse, family member, including a~~  
15 ~~relative, parent, present or former step-parent, present or~~  
16 ~~former in-law, child or co-parent of a child, or a person with~~  
17 ~~whom the victim has had a continuing personal relationship.~~  
18 ~~Cohabitation is not necessary to be deemed a household member~~  
19 ~~for the purposes of this section.~~

20 ~~G.]~~ B. Whoever commits stalking is guilty of a  
21 misdemeanor. Upon a second or subsequent conviction, the  
22 offender is guilty of a fourth degree felony.

23 ~~[D.]~~ C. In addition to any punishment provided  
24 pursuant to the provisions of this section, the court shall  
25 order a person convicted of stalking to participate in and

.149289.4GR

underscored material = new  
[bracketed material] = delete

1 complete a program of professional counseling at his own  
2 expense."

3 Section 4. A new section of the Harassment and Stalking  
4 Act is enacted to read:

5 "[NEW MATERIAL] DEFINITIONS.--As used in the Harassment  
6 and Stalking Act:

7 A. "electronic communication device" includes a  
8 computer, video recorder, digital camera, fax machine, pager,  
9 audio equipment or any device that can produce an  
10 electronically generated image, message or signal; and

11 B. "household member" means a spouse, former  
12 spouse, family member, including a relative, parent, present or  
13 former stepparent, present or former in-law, child or co-parent  
14 of a child, or a person with whom the victim has had a  
15 continuing personal relationship. Cohabitation is not  
16 necessary to be deemed a household member for the purposes of  
17 the Harassment and Stalking Act."

18 Section 5. A new section of the Harassment and Stalking  
19 Act is enacted to read:

20 "[NEW MATERIAL] INCITEMENT TO COMMIT HARASSMENT OR  
21 STALKING--PENALTY.--

22 A. Incitement to commit harassment or stalking  
23 consists of a person intentionally using any combination of  
24 written communication, verbal communication or an electronic  
25 communication device to publish, display or distribute

.149289.4GR

underscored material = new  
[bracketed material] = delete

1 information in a manner that would to incite another person to  
2 commit harassment or stalking or would substantially increase  
3 the risk of harm or violence to a victim of harassment or  
4 stalking.

5 B. Whoever commits incitement to commit harassment  
6 or stalking is guilty of a misdemeanor. Upon a second or  
7 subsequent conviction, the offender is guilty of a fourth  
8 degree felony."

9 Section 6. A new section of the Harassment and Stalking  
10 Act is enacted to read:

11 "[NEW MATERIAL] LOCATION OF AN OFFENSE.--When a person  
12 commits harassment, stalking or incitement to commit harassment  
13 or stalking by using an electronic communication device, the  
14 offense may be deemed to have been committed either at the  
15 place where the electronic communication was originated or at  
16 the place where the electronic communication was received."

17 Section 7. EFFECTIVE DATE.--The effective date of the  
18 provisions of this act is July 1, 2004.